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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 432

JOHN McGINNESS,

Petitioner,

VS.

CHARLES LUNA, PRESIDENT BROTHERHOOD OF RAILROAD TRAINMEN, S. VANDER HEI, VICE PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN, and T. D. SHARKEY, LOUIS SMIRAGLIA, and W. G. ZIPPMAN, PRESIDENT, SECRETARY, and TREASURER, respectively, of LOCAL 225, BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Illinois Appellate Court, Appendix A to the Petition, is reported at 46 Ill. App. 2d 43, 196 N. E. 2d 711.

JURISDICTION

The judgment appealed from affirmed the denial of a temporary injunction. Such a judgment is not final within the meaning of 28 U. S. C. A. 1257, the section of the Judicial Code relied upon by Petitioner.

QUESTIONS PRESENTED

1) Whether the denial of a Motion for a Temporary Injunction is a final judgment such as to invest this Court with jurisdiction.

2) Whether the Landrum-Griffin Act, 29 U. S. C. 411, et seq., is involved in a judgment which nowhere treats of that Act and that affirms the trial court on a state rule of pleading.

STATUTES

No statutes of the United States are involved in this case. The affirmance below is based solely upon a non-federal ground.

STATEMENT

This litigation concerns the attempt of Petitioner to obtain an injunction prohibiting an election for the office of legislative representative of his local union and also to prohibit an election for the office of a delegate of his local union to the convention of his international union. Before a hearing, Petitioner moved for a Temporary Injunction prohibiting the holding of elections for the said offices until the court held a final hearing on the merits of the Petitioner's Complaint. That Complaint sought a judgment declaring an Order of December 1, 1961 by the international president of

the union to be void and sought an injunction in aid of the judgment preventing Respondents from taking any action to prevent the Petitioner from running for office in his local union or in the international union in the future.

At the time of the hearing on the Motion for a Temporary Injunction, Respondents' Motion to Dismiss the Complaint for Want of Equity was also heard. The Chancellor denied the Motion for a Temporary Injunction and denied the Motion of Respondents with leave to the Respondents to raise the same matter in their Answer to the Complaint[1]

The Appellate Court affirmed the denial of a Temporary Injunction on the ground that the Complaint failed to make any allegation of ultimate fact to bring the plaintiff within any exception to the Illinois Rule that internal remedies must be exhausted before suit can be filed against a labor union. The Appellate Court did not decide any questions involving the Landrum-Griffin Act, none having been raised in the trial court.

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1. The Complaint, the Motion for a Temporary Injunction; the Motion to Dismiss the Complaint for Want of Equity, and the Orders dismissing both motions are contained in the Abstract of Record filed with the Petition herein.

REASONS FOR DENYING THE WRIT

I.

THIS COURT IS WITHOUT JURISDICTION BECAUSE THE DENIAL OF THE TEMPORARY INJUNCTION IS NOT A FINAL JUDGMENT.

Petitioner seeks to have this Court enter an injunction refused below to be effective only until a hearing on the merits can be had. The mere statement of this request demonstrates the non-final nature of the judgment.

Petitioner relies on Section 1257 of the Judicial Code, 62 Stat. 929 for jurisdiction. That section provides for a review by this Court of final judgments or decrees rendered by the highest court of the state in which a decision can be had. Petitioner nowhere considers the question of finality. Moreover, this Court has squarely held that a state court judgment affirming a temporary injunction was not final within the meaning of Section 1257 of the Judicial Code. *Montgomery Building & Construction Trades Council* v. *Ledbetter Erection Company*, 344 U. S. 178, 97 L. Ed. 204 (1952). This rule of finality is particularly appropriate here where the temporary injunction was refused. The only distinguishing of that case involves circumstances not present here. See *Local No. 438* v. *Curry*, 371 U. S. 542, 9 L. Ed. 2d 514 (1963) where this Court refused to follow *Ledbetter* because of a final and erroneous assertion of jurisdiction by a state court to issue a temporary injunction in a labor dispute.

This Court is without jurisdiction to review the instant judgment under the Judicial Code. The interlocutory nature of the judgment below is such that the dispute is not ripe for adjudication. Indeed, an Answer has been filed in

the instant suit since the Motion for a Temporary Injunction was denied and, under Illinois law, the cause may be tried on the merits despite the appeal from the denial of the temporary injunction. In these circumstances, no question is presented for review.

II.

THE JUDGMENT IS BASED SOLELY ON STATE LAW REQUIRING A PLEADING TAKING THE CASE OUT OF THE RULE REQUIRING AN EXHAUSTION OF INTERNAL REMEDIES.

Petitioner sought to bring the Landrum-Griffin Act into this case during oral argument before the Appellate Court. The Appellate Court, however, decided this case solely on state law. That court specifically states that Petitioner had failed to ". . . make any allegation of ultimate fact to bring him within any exception to the rule that a court of equity may not intervene until the remedies within the procedures of the union have been exhausted." (Appendix A to Petition). If Petitioner has any rights under the Landrum-Griffin Act, the simple way to assert those rights is to amend his complaint. (It is ironic to note Petitioner was prohibited from holding office in the union because he was found guilty of permitting the raising of dues without notice, and without a secret ballot as required by the Landrum-Griffin Act as well as the union constitution, Appendix A to Petition.)

It is said that Respondents would suffer no damage if the temporary injunction had been granted. This is obviously incorrect since the International Convention for the union will commence on September 28 and if the temporary injunction had been granted, the local union would be without a

delegate to the Convention. In addition, it would also be without a legislative representative.

Petitioner was barred from holding a union office on December 1, 1961. He chose to present an appeal to the International Convention of the union. No law suit was brought by the Petitioner until the eve of a local union election in November of 1963. The Complaint alleged only violation of alleged rights under the union constitution. Petitioner's Motion for a Temporary Injunction was denied and that denial was affirmed. Under Illinois law, the Petitioner was free to seek a trial on the merits while his appeal was pending. No action in that respect was taken by Petitioner. In such circumstances, this Court should not intervene.

CONCLUSION.

For the foregoing reasons, it is respectfully suggested that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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